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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF OREGON

9 The Estate of
10 KENDRA SARIE JAMES,

Civil No. 03-1371-AA
O R D E R

11 Plaintiff,

12 vs.

13 SCOTT MCCOLLISTER,

14 Defendant.

15 AIKEN, Judge:

16 The parties presented this matter to a jury in a trial
17 lasting seven days. The jury deliberated and returned a verdict
18 for the defendant. The parties agreed to allow the jurors access
19 to the car at issue, including climbing in and sitting in the
20 car; and to a "view" of the scene, staged as it occurred on the
21 night at issue.

22 Plaintiff now moves for a new trial arguing that the
23 "governmental interest advanced by the defendant at trial simply
24 does not justify the extreme level of force used." Plaintiff's
25 Memo in Support, p. 2. Plaintiff's motion is denied.

26 The legal standards that govern a motion for new trial are
27 significant. The parties agree that this motion can only be
28 granted if the verdict "is against the great weight of evidence

1 or it is quite clear that the jury has reached a seriously
2 erroneous result." Johnson v. Paradise Valley Unified Sch.
3 Dist., 251 F.3d 1222, 1229 (9th Cir.) (internal quotation omitted),
4 cert. denied, 534 U.S. 1055 (2001). Importantly, the trial
5 court, "is not justified in granting a new trial merely because
6 it might have come to a different result from that reached by the
7 jury." Roy v. Volkswagen of America, Inc., 896 F.2d 1174, 1176
8 (9th Cir. 1990) (internal quotation omitted). Moreover, "it is not
9 the courts' place to substitute our evaluations for those of the
10 jurors." Union Oil Co. Of Cal. V. Terrible Herbst, Inc., 331
11 F.3d 735, 744 (9th Cir. 2003), cert. denied, 540 U.S. 1107 (2004).
12 Finally, "a district court may not grant or deny a new trial
13 merely because it would have arrived at a different verdict."
14 United States v. 4.0 Acres of Land, 175 F.3d 1133, 1139 (9th
15 Cir.), cert. denied, 528 U.S. 1047 (1999).

16 Plaintiff argues that a jury, after listening to defendant
17 McCollister's testimony and the testimony of the other witnesses,
18 could not have concluded that a police officer in defendant
19 McCollister's position could have objectively concluded he was at
20 risk of serious bodily harm or death at the moment defendant
21 McCollister decided to shoot the plaintiff because McCollister
22 was not in front of the car or underneath it. The jury both saw
23 and heard McCollister describe the danger he was in of being
24 'pulled under and dragged by the accelerating car.' The jury had
25 an opportunity to view the car and put themselves in the
26 positions of both plaintiff and defendant in and around the car.
27 There was conflicting evidence surrounding the speed of the car
28 when McCollister fired his weapon.

1 Regarding plaintiff's contention that the court's use of
2 force jury instructions improperly asked the jury to apply a
3 subjective (versus an objective) standard, that contention is
4 without merit. See Jury Instruction, p. 7. The jury was
5 repeatedly instructed that McCollister must have a "reasonable
6 belief" that deadly force was necessary, which "is measured by
7 the force a reasonable and prudent law enforcement officer would
8 have under the circumstances" and which "must be judged
9 objectively from the information available at the time from the
10 perspective of a reasonable officer on the scene." Id.

11 I find that plaintiff has failed to meet the standards
12 necessary to grant a new trial. The verdict was not contrary to
13 the great weight of eyewitness testimony, the expert testimony,
14 or the forensic evidence. Nor has the plaintiff demonstrated
15 that the jury reached a seriously erroneous result.

16 CONCLUSION

17 Given the legal standards quoted above, I find that the
18 verdict was not contrary to the great weight of evidence or
19 seriously erroneous. Plaintiff's motion for new trial (doc. 194)
20 is denied.

21 IT IS SO ORDERED.

22 Dated this 23 day of September 2005.

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26 /s/ Ann Aiken
27 Ann Aiken
28 United States District Judge